

MONROE COUNTY CLERK'S OFFICE

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Return To:  
SETH MILBAUER  
1825 Park Avenue  
9th Floor  
New York, NY 10035

JOHN DOE-17958

CHURCH OF THE TRANSFIGURATION PARISH  
DOES 1-5 whose identities are unknown to Plaintiff,

State Fee Index Number	\$165.00	
County Fee Index Number	\$26.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: RR
Total Fees Paid:	\$210.00	

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
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SECTION 319 OF THE REAL PROPERTY LAW OF THE  
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ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

Index No.:

-----X  
JOHN DOE - 17958,

Plaintiff,

-against-

CHURCH OF THE TRANSFIGURATION PARISH  
and DOES 1-5 whose identities are unknown to Plaintiff

**SUMMONS**

Plaintiff designates MONROE  
County as the place of trial.

The basis of venue is:  
Residence of Parties

Defendants.  
-----X

**To the above named Defendants:**

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: NEW YORK, NY  
November 14, 2019

Robert J. Greenstein  
GREENSTEIN & MILBAUER, LLP  
Attorney for Plaintiff  
**JOHN DOE - 17958**  
1825 Park Avenue  
9th Floor  
New York, NY 10035  
(212) 685-8500  
Our File No. 17958

TO:  
CHURCH OF THE TRANSFIGURATION PARISH  
50 West Bloomfield Rd  
Pittsford, NY 14534

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

-----X  
JOHN DOE - 17958,

Plaintiff,

-against-

CHURCH OF THE TRANSFIGURATION PARISH  
and DOES 1-5 whose identities are unknown to Plaintiff

Defendants.  
-----X

Index No.:

**VERIFIED  
COMPLAINT**

Plaintiff by his attorneys, **GREENSTEIN & MILBAUER, LLP** complaining of the  
Defendant, respectfully alleges, upon information and belief:

In approximately 1983-1987 Fr. Gerald Appleby sexually abused Plaintiff as a child.  
While the abuse occurred, Defendant were generally negligent, they negligently employed Fr.  
Appleby, and gave him access to children, including Plaintiff. This lawsuit arises out of  
Plaintiff's significant damages from that sexual abuse, described below. Plaintiff, by and through  
Plaintiff's attorneys, states and alleges as follows:

**PARTIES**

A. Plaintiff

1. At all times material to this Complaint, Plaintiff was a parishioner at Church of the Transfiguration located within the Diocese of Rochester a/k/a The Roman Catholic Diocese of Rochester, New York. At all times material, Plaintiff resided in the State of New York.
2. While Plaintiff was a minor he was a victim of one or more criminal sex acts in the State

of New York. Since such criminal violation is the basis for this action, plaintiff is entitled to the protection of Civil Rights Law 50-b and will file a motion asking this Court for permission to proceed using a pseudonym.

4. In the alternative, plaintiff will seek a stipulation from the defendants agreeing to enter into a protective order which will ensure that his identity is protected from the public while allowing the defendants full access to information necessary for their defense.

B. Defendant

5. Whenever reference is made to any act, deed, or transaction of Church of the Transfiguration Parish, the allegation means that Church of the Transfiguration Parish engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of Church of the Transfiguration's business or affairs.

6. At all times material, Defendant Church of the Transfiguration Parish (hereafter "Parish") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 50 West Bloomfield Road Pittsford, NY 14534.

7. The Parish was created in approximately 1983. Defendant functions as a business by engaging in numerous revenue-producing activities and soliciting money from its members in exchange for its services.

8. The Parish has several programs that seek out the participation of children including, but not limited to, schools and other educational programs. The Parish, through its officials,

employees, agents and apparent agents has complete control over these activities and programs involving children. The Parish has the power to appoint, train, supervise, monitor, remove, and terminate it and every person working with children within the Diocese

9. Defendant Does 1 through 5 are unknown employees and/or agents whose identities will be provided when they become known pursuant to C.P.L.R. § 1024.

### **JURISDICTION**

10. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendant's principal places of business are in New York and because the unlawful conduct complained of herein occurred in New York.

11. Venue is proper pursuant to C.P.L.R. § 503 in that Monroe County is the principal place of business of Defendant Parish. In addition, many of the events giving rise to this action occurred in Kings County.

### **FACTUAL ALLEGATIONS**

#### **A. Background**

12. The hierarchy of the Roman Catholic Church and, by implication this Defendant, have been aware of the serious problem of clergy sexual abuse of children since at least the 1800s.

13. Further, Roman Catholic Church officials, including this Defendant, have used its power and influence to discourage and prevent victims and their families from disclosing allegations of

abuse.

14. Additionally, Plaintiff's relationship as a vulnerable child and parishioner and student at Church of the Transfiguration to Defendant and Fr. Appleby, was one in which Plaintiff was subject to the ongoing influence of Defendant and Fr. Appleby, Plaintiff's abuser.

B. Specific Allegations

15. At all times material, Fr. Appleby was a Roman Catholic cleric who was an employee and/or agent of the Church of the Transfiguration Parish. Fr. Appleby remained under the direct supervision, employ, and control of Defendant.

16. Defendant placed Fr. Appleby in positions where he had access to and worked with children as an integral part of his work.

17. Plaintiff was raised in a devout Roman Catholic family and attended Church of the Transfiguration for religious services, religious school and youth activities. Church of the Transfiguration is located in Pittsford, New York, in the Rochester Diocese. Plaintiff and Plaintiff's family came in contact with Fr. Appleby as an employee and/or agent and representative of Defendant.

18. Plaintiff, as a youth, attended religious services and participated in youth activities at Church of the Transfiguration, including religious school. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church, including Defendant and its agents, specifically including Fr. Appleby. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on Defendant and Fr. Appleby. Defendant had custody of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

19. In approximately 1985, when Plaintiff was approximately 8 years old, through and including 1989, when Plaintiff was 12 years old, Fr. Appleby engaged in unpermitted sexual contact with Plaintiff.

### COUNT I: NEGLIGENCE

20. Plaintiff realleges paragraphs 1-19 above.

21. Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

22. Defendant owed Plaintiff a duty of care because it had a special relationship with Plaintiff.

23. Defendant also had a duty to properly train and supervise its clerics arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children in the Parish. This special relationship was based on the high degree of vulnerability of the children entrusted to its care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendant had a duty to establish measures of protection of children not necessary for persons who are older and better able to safeguard themselves.

24. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant also had a special relationship with Fr. Appleby arising from the degree of control it had over Fr. Appleby's conduct in and on behalf of the Defendant.

25. Defendant owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its youth programs, encouraged youth and parents to have the youth

participate in its programs; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held out its agents, including Fr. Appleby, as safe to work with children; encouraged parents and children to spend time with its agents; and/or encouraged its agents, including Fr. Appleby, to spend time with, interact with, and recruit children.

26. By accepting custody of the minor Plaintiff, Defendant established an in loco parentis relationship with Plaintiff from which arose a duty to protect Plaintiff from injury. Defendant entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff's minority and Defendant's undertaking the care and guidance of the Plaintiff, Defendant held a position of power over Plaintiff. Further, Defendant, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of power. Defendant, through its employees, agents and apparent agents exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

27. By the above-stated actions, Defendant assumed and/or created an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for him when he participated in its programs. Defendant owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant had the duty to exercise the same degree of care over minors under its control as a reasonably prudent person would have exercised under similar circumstances.

28. By establishing and operating the Parish, and Church of the Transfiguration, which offered educational programs to children, and by accepting the enrollment and participation of



the minor Plaintiff as a participant in those educational programs, Defendant assumed and/or created a duty to properly supervise Plaintiff to prevent harm to him from generally foreseeable dangers.

29. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Plaintiff was an invitee on its property and Fr. Appleby posed a dangerous condition on Defendant's property.

30. Defendant breached its duties to Plaintiff. Defendant failed to use ordinary care in determining whether its facilities were safe and/or in determining whether they had sufficient information to represent its facilities as safe. Defendant's breaches of its duties include, but are not limited to: failure to protect Plaintiff from a known danger; failure to have sufficient policies and procedures in place to prevent child sex abuse; failure to properly implement policies and procedures to prevent child sex abuse; failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were effective; failure to adequately inform families and children of the risks of child sex abuse; failure to investigate risks of child molestation; failure to properly screen and/or train the employees, agents, and/or apparent agents at institutions and programs within Defendant's geographical confines; failure to train the minors within Defendant's geographical confines about the dangers of sexual abuse by clergy; failure to have any outside agency review its safety procedures; failure to protect the children in its programs from child sex abuse; failure to adhere to the applicable standard of care for child safety; failure to investigate the amount, and type of information necessary to represent the institutions, programs, leaders and people as safe; failure to train its employees, agents, and/or apparent agents to properly identify signs of child molestation by fellow employees, agents, and/or apparent agents; failure by relying upon mental health professionals; and/or failure by

relying on people who claimed that they could treat child molesters.

31. Defendant also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Fr. Appleby posed and the risks of child sexual abuse in Catholic institutions. They also failed to warn them about any of the knowledge that Defendant had about child sexual abuse.

32. Defendant additionally violated a legal duty by failing to report known and/or suspected abuse of children by Fr. Appleby and/or its other agents to the police and law enforcement.

33. Prior to the sexual abuse of Plaintiff, Defendant learned or should have learned that Fr. Appleby was not fit to work with children. Defendant, by and through its agents, servants and/or employees, became aware, or should have become aware of Fr. Appleby's propensity to commit sexual abuse and of the risk to Plaintiff's safety. Alternatively, Defendant knew or should have known that they did not have sufficient information about whether or not its employees and/or agents and/or apparent agents at Church of the Transfiguration was safe.

34. Defendant knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Parish. Alternatively, Defendant knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities within the Parish.

35. Defendant knew or should have known that Defendant had numerous employees, agents and/or apparent agents who had sexually molested children. Defendant knew or should have known that child molesters have a high rate of recidivism. They knew or should have known that there was a specific danger of child sex abuse for children participating in its youth programs.

36. Despite this knowledge, Defendant negligently accepted and indicated that Fr. Appleby was fit to work with children; and/or that any previous suitability problems Fr. Appleby had were fixed and cured; and/or that Fr. Appleby would not sexually molest children; and/or that Fr. Appleby would not injure children.

37. Defendant's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child participating in the programs and activities Defendant offered to minors, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Fr. Appleby had access to through Defendant's facilities and programs, Plaintiff was a foreseeable victim.

38. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendant.

## **COUNT II: NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES**

39. Plaintiff realleges paragraphs 1-38 above.

40. At all times material, Fr. Appleby was employed by Defendant and/or was under Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Fr. Appleby engaged in the wrongful conduct while acting in the course and scope of his employment, agency, and/or apparent agency with Defendant and/or accomplished the sexual abuse by virtue of his job-created authority.

41. Defendant had a duty, arising from its employment, agency, and control of Fr. Appleby, to ensure that he did not sexually molest children.

42. Further, Defendant owed a duty to screen, train and educate employees, agents, apparent agents, and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

43. Defendant were negligent in the screening, training, supervision, and instruction of its employees. Defendant failed to timely and properly educate, train, supervise, and/or monitor its employees, agents, and/or apparent agents with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

44. Defendant were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Fr. Appleby and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Fr. Appleby's sexual abuse of Plaintiff.

45. In failing to properly supervise Fr. Appleby, and in failing to establish such training procedures for employees and administrators, Defendant failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

46. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendant in the training and/or supervising of its employees.

### **COUNT III: NEGLIGENT RETENTION OF EMPLOYEES**

47. Plaintiff realleges paragraphs 1-46 above.

48. At all times material, Fr. Appleby was employed by Defendant and was under Defendant's direct supervision, employ/agency/and/or apparent agency, and control when he committed the wrongful acts alleged herein.

49. Defendant negligently retained Fr. Appleby with knowledge of Fr. Appleby's propensity for the type of behavior which resulted in Plaintiff's injuries in this action. Defendant failed to investigate Fr. Appleby's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Fr. Appleby's propensity for child sexual abuse. Defendant should have made an appropriate investigation of Fr. Appleby and failed to do so. An appropriate investigation would have revealed the unsuitability of Fr. Appleby for continued employment and it was unreasonable for Defendant to retain Fr. Appleby in light of the information they knew or should have known.

50. Defendant negligently retained Fr. Appleby in a position where he had access to children and could foreseeably cause harm to Plaintiff. In failing to timely remove Fr. Appleby from working with children or and/or terminate the employment, agency, and/or apparent agency of Fr. Appleby, Defendant failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

51. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence of Defendant in the retention of its employees.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, based on the foregoing causes of action, Plaintiff prays for judgment against Defendant in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

Yours, etc.

Robert J. Greenstein  
GREENSTEIN & MILBAUER, LLP  
Attorney for Plaintiff  
**JOHN DOE - 17958**  
1825 Park Avenue  
9th Floor  
New York, NY 10035  
(212) 685-8500  
Our File No. 17958

**ATTORNEY'S VERIFICATION**

ROBERT J. GREENSTEIN, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury: I am an attorney at **GREENSTEIN & MILBAUER, LLP**, attorneys of record for Plaintiff(, JOHN DOE - 17958. I have read the annexed **COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Plaintiff(s) is/are not presently in the county wherein I maintain my offices.

DATED: November 14, 2019  
New York, NY



ROBERT J. GREENSTEIN

**CERTIFICATION**

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed **SUMMONS & VERIFIED COMPLAINT** are not frivolous.

Dated: NEW YORK, NY  
November 14, 2019

Yours, etc.



Robert J. Greenstein  
GREENSTEIN & MILBAUER, LLP  
Attorney for Plaintiff  
**Gregory Ericson**  
1825 Park Avenue  
9th Floor  
New York, NY 10035  
(212) 685-8500  
Our File No: 17958